

STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES

CONTRACT FOR
MANAGED SERVICES FOR INFORMATION TECHNOLOGY

AT&T CORPORATION

1. Introduction

A. Parties

This Contract for services is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter “DIR”) with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and AT&T Corporation (hereinafter “Vendor” or “AT&T”), with its principal place of business at One AT&T Plaza, Dallas, Texas 75202.

B. Compliance with Procurement Laws

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a solicitation on the Texas Building and Procurement Commission’s Electronic State Business Daily, Request for Offer (RFO) DIR-SDD-TMP-091, on December 8, 2006, for Managed Services for Information Technology. DIR acknowledges the fact that Southwestern Bell Telephone Company dba SBC Datacomm has merged with AT&T Corporation and the name of the Vendor has changed to AT&T Corporation. Upon execution of this Contract, a notice of award for RFO DIR-SDD-TMP-091 shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

This Contract; Appendix A, Standard Terms and Conditions For Services Contracts; Appendix B, Vendor’s Historically Underutilized Businesses Subcontracting Plan; Appendix C, Service Agreement; Exhibit 1, Vendor’s Response to RFO DIR-SDD-TMP-091, including all addenda; and Exhibit 2, RFO DIR-SDD-TMP-091, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions. Appendix C, Service Agreement (including related attachments) identifies the Services Vendor may provide to Customer, the price (including discounts, if applicable) for each Service, and the term during which such prices are in effect.

2. Term of Contract

The term of this Contract shall be three (3) years commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, DIR and Vendor may extend this Contract, upon mutual agreement, for up to two (2) optional one-year terms.

3. Service Offerings

Services available under this Contract are limited to the designated telecommunications managed services as specified below. Vendor may incorporate changes to their services offerings; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above. The designated services are offered only as components of comprehensive suites of telecommunications managed services. One or more of the designated service offerings (i) may require contracting for service components of a comprehensive suite of telecommunications managed services or (ii) may be unavailable as service components, at the discretion of the Vendor.

A. Technology Services

- a. Management of call processing architecture
- b. IP Telephony Services
- c. IP Call Center or Contact Center Services
- d. IVR/Auto-Attendant
- e. Legacy Voice Systems Management or Integration
- f. Data and Voice Networking Solutions and Management

B. Support Services

- a. MAC's
- b. Solution Software and Licenses
- c. Break/Fix and Maintenance
- d. Help/Support Desk Services
- e. Training

C. Management Services

- a. Hosted Solutions
 - i. System Design and Implementation
 - ii. Operations
- b. Requirements Development
- c. Project management
- d. Integration Services
- e. Network Readiness Assessment
- f. SLA's and Performance Metrics
- g. Reporting
- h. Transition and Termination Services

D. Excluded Service Offerings

- a. Any access services included in DIR TEX-AN or Go DIRect Contracts
- b. Transport other than the TEX-AN 2000 or MPLS Network
- c. Long Distance Services
- d. Internet Services

4. Pricing**A. Managed Service Delivery Price (MSDP)**

MSDP is the sales price calculated utilizing the price model developed by Vendor for this Contract.

B. Customer Discount

The minimum Customer discount for all services will be the percentage off MSDP as specified below. Customer Discount includes the DIR administrative Fee specified in Section 5.

Services	Customer Discount
Technology Services:	24.25% - 49.25%
Support Services:	24.25% - 49.25%
Management Services:	24.25% - 49.25%

C. Customer Price

1) The price to the Customer shall be calculated as follows:

$$\text{Customer Price} = \text{MSDP} - \text{Customer Discount}$$

The above formula is applicable for each individual service offering designated in Section 3 except when a Vendor published or promotional rate is utilized, in which case no Customer Discount will be applied.

2) Customers purchasing services under this Contract may negotiate more advantageous pricing or participate in special promotional offers. In such event, a copy of such better offerings shall be furnished to DIR upon request.

3) If pricing for services available under this Contract are provided at a higher discount to: (i) an eligible Customer who is not purchasing those services under this Contract or (ii) any other entity or consortia authorized by Texas law to sell said services to eligible Customers, then the available discounts in this Contract shall be adjusted to that higher discount. This Contract shall be amended within ten (10) business days to reflect the higher discounts.

D. DIR Administrative Fee

The administrative fee specified in Section 5 below shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

E. Tax-Exempt

As per Section 151.309, Texas Tax Code, Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Customers under

this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j). Customer shall provide a tax exemption certificate upon request.

F. Travel Expense Reimbursement

Pricing for services provided under this Contract are exclusive of any travel expenses that may be incurred in the performance of those services. Travel expense reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by Customers shall not exceed the amounts authorized by the current State Travel Regulations. Travel time may not be included as part of the amounts payable by Customer for any services rendered under this Contract. The DIR administrative fee specified in Section 5 below is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by Customer.

H. Changes to Prices

Vendor may change the price of any service at any time, based upon changes to the MSRP, but discount levels shall remain consistent with the discount levels specified in this Contract. Price decreases shall take effect automatically during the term of this Contract and shall be passed onto the Customer immediately.

5. DIR Administrative Fee

A) The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is three quarters of one percent (0.75%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$750.

B) All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor. Any change in the administrative fee shall be incorporated in the price to the Customer.

6. Notification

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:

Sherri Parks, Division Director
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-4700
Facsimile: (512) 475-4759
Email: sherri.parks@dir.state.tx.us

If sent to the Vendor:

George Spencer, Director
AT&T Corporation
712 E. Huntland Drive, Room 329
Austin, Texas 78752
Phone: (512) 421 -5033
Facsimile: (512) 870-4056
Email: gs2191@att.com

7. Service Agreement

Services provided under this Contract shall be in accordance with the Service Agreement as set forth in Appendix C of this Contract, including any Statements of Work and/or schedules. No changes to the Service Agreement terms and conditions may be made unless previously agreed to by Vendor and DIR.

8. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Services Contracts.

A. Section 2. Definitions, is hereby amended to add the following:

G. Affiliate of a party means any entity that controls, is controlled by, or is under common control with, such party.

H. Damages - means collectively all injury, damage, liability, loss, penalty, interest and expense incurred.

I. Effective Date - means, for any Service Agreement, the date on which the last party signs the Service Agreement unless a later date is required by regulation or law.

J. Service Agreement - means the agreement executed by Customer for Services provided under this Contract, including any Statements of Work and/or Schedules.

K. Service - means a service (including Equipment) provided under this Contract.

L. Service Component - means an individual component of a Service provided under this Contract.

M. Site - means Customer's physical location, including Customer's collocation space on AT&T's, its Affiliate's, or subcontractor's property, where AT&T installs or provides a Service.

B. Section 3. General Provisions, B. Modification of Contract Terms and/or Amendments is hereby replaced in its entirety as follows:

1) The terms and conditions of the Contract shall govern all transactions by Customers under the Contract. The Contract may only be modified or amended upon mutual written agreement of DIR and Vendor.

2) Customers shall not have the authority to modify the terms of the Contract; however, additional Customer terms and conditions that do not conflict with the Contract and are acceptable to Vendor may be added in a Purchase Order and custom terms and conditions that do not conflict with the Contract (as mutually agreed by Vendor and Customer) may be added in a Service Agreement and given effect. No additional term or condition added in a Purchase Order issued by a Customer can weaken a term or condition of the Contract. Pre-printed terms and conditions on any Purchase Order issued by Customer hereunder will have no

C. Section 4. Contract Fulfillment and Promotion, A. Service, Sales and Support of the Contract is hereby replaced in its entirety as follows:

Subject to the availability and operation limitations of the necessary facilities and equipment, Vendor shall provide service, sales and support resources to serve all Customers throughout the State. It is the responsibility of the Vendor to sell, market, and promote services available under the Contract. Vendor shall use its best efforts to ensure that potential Customers are made aware of the existence of the Contract. All sales to Customers for services available under the Contract shall be processed through the Contract.

D. Section 7. Vendor Responsibilities, A. Indemnification, 2) Acts or Omissions is hereby replaced in its entirety as follows:

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR PERMITTED ASSIGNEES, FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED REASONABLE COSTS, ATTORNEY FEES, AND EXPENSES for bodily injury (including death) or physical damage to tangible or real property to the extent directly arising out of, or resulting from any negligent acts or omissions, or willful misconduct of the Vendor or its agents, employees, or subcontractors, in the execution or performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

E. Section 7. Vendor Responsibilities, A. Indemnification, 3) Infringements is hereby replaced in its entirety as follows:

a) Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND PERMITTED ASSIGNEES from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT, but not in circumstances where the claimed infringement arises out of or results from: (a) Customer's, its Affiliate's or a User's content; (b) modifications to the Service by Customer, its Affiliates or third parties, or combinations of the Service with any services or products not provided by AT&T; (c) AT&T's adherence to Customer's or its Affiliate's written requirements; or (d) use of the Service in violation of this Contract (including the Service Agreement). VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH

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OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL REASONABLE COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES FOR STATE AGENCY CUSTOMERS. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND, TO THE EXTENT ALLOWED BY LAW, BY VENDOR'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

b) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense: (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the service with functionally equivalent or superior service so that Customer's use is non-infringing. If neither option (i) nor (ii) are reasonably available, Vendor may terminate the affected service without liability other than as stated in section a), above.

F. Section 7. Vendor Responsibilities, A. Indemnification, 4) PROPERTY DAMAGE is hereby replaced in its entirety as follows:

IN THE EVENT OF LOSS, DAMAGE, OR DESTRUCTION OF ANY TANGIBLE OR REAL PROPERTY OF CUSTOMER OR THE STATE SOLELY AND DIRECTLY DUE TO THE NEGLIGENCE, MISCONDUCT, WRONGFUL ACT OR OMISSION ON THE PART OF THE VENDOR, ITS EMPLOYEES, AGENTS, REPRESENTATIVES, OR SUBCONTRACTORS DURING THEIR PERFORMANCE UNDER THIS AGREEMENT, THE VENDOR SHALL PAY THE FULL RESULTING REASONABLE COST OF EITHER REPAIR, RECONSTRUCTION, OR REPLACEMENT OF THE PROPERTY, AT THE CUSTOMER'S REASONABLE SOLE ELECTION.

G. Section 7. Vendor Responsibilities, B. Taxes/Worker's Compensation/ UNEMPLOYMENT INSURANCE is hereby replaced in its entirety as follows:

1) VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. VENDOR AGREES AND ACKNOWLEDGES THAT VENDOR ITS EMPLOYEES, REPRESENTATIVES, AGENTS OR SUBCONTRACTORS SHALL NOT BE ENTITLED TO ANY STATE EMPLOYMENT BENEFIT OR EMPLOYMENT BENEFIT OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION

OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY EMPLOYMENT BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

2) VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR PERMITTED ASSIGNEES, FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, REASONABLE ATTORNEY FEES, AND EXPENSES, RELATING TO TAX LIABILITY OF VENDOR, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR EXPECTATIONS OF EMPLOYMENT BENEFITS BY VENDOR, ITS EMPLOYEES, REPRESENTATIVES, AGENTS OR SUBCONTRACTORS IN ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL REASONABLE COSTS OF DEFENSE INCLUDING REASONABLE ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

H. Section 7. Vendor Responsibilities, H. Confidentiality is hereby replaced in its entirety as follows:

1) Vendor acknowledges that DIR is a government agency subject to the Texas Public Information Act. Vendor also acknowledges that DIR will comply with the Public Information Act, and with all opinions of the Texas Attorney General's office concerning this Act.

2) Under the terms of the Contract, DIR may provide Vendor with information related to Customers. Vendor shall not re-sell or otherwise distribute or release Customer information to any party in any manner.

3) **Confidential Information.** To the extent consistent with the Texas Public Information Act, Confidential Information means: information the parties share with each other in connection with this Agreement or in anticipation of providing Services under this Agreement, but only to the extent identified as Confidential Information in writing.

a) **Obligations.** Each party's Confidential Information will, for a period of 3 years following its disclosure to the other party (except in the case of software, which is indefinite): (a) be held in confidence; (b) be used and transmitted between countries only for purposes of using the Services or performing this Agreement (including in the case of AT&T, the ability to monitor Customer's transmissions in order to detect fraud, check quality, and to operate, maintain and repair the Services); and (c) not be disclosed, except to the receiving party's employees, agents and contractors having a need-to-know (but only if such agents and contractors are not direct competitors of the other party and agree in writing

to use and disclosure restrictions as restrictive as this Section 7), or to the extent compelled to be revealed by law (including the Texas Public Information Act), governmental authority or legal process (but only if such disclosure is limited to that which is compelled by such legal process and prompt notice is provided to the disclosing party to the extent practicable and not prohibited by law or legal process).

b) **Exceptions.** The restrictions in this Section will not apply to any information that: (a) is independently developed by the receiving party; (b) is lawfully received by the receiving party free of any obligation to keep it confidential; or (c) becomes generally available to the public other than by breach of this Agreement.

c) **Privacy Laws.** Each party is responsible for complying with the privacy laws applicable to its business. If Customer does not want AT&T personnel to comprehend Customer data to which they may have access in performing Services, Customer should encrypt such data so that it will be unintelligible. Until directed otherwise by Customer in writing, if AT&T designates a dedicated account representative as Customer's primary contact with AT&T, Customer authorizes that representative to discuss and disclose Customer's customer proprietary network information (CPNI) to any employee or agent of Customer without a need for further authentication or authorization.

I. Section 7. Vendor Responsibilities, K. Limitation of Liability is hereby replaced in its entirety as follows:

1) EXCEPT AS SET FORTH IN SECTIONS 7.A.2 AND 7.A.3, AT&T'S ENTIRE LIABILITY, AND CUSTOMER'S EXCLUSIVE REMEDY, FOR DAMAGES ARISING OUT OF MISTAKES, OMISSIONS, INTERRUPTIONS, DELAYS, ERRORS OR DEFECTS IN THE SERVICES, AND NOT CAUSED BY CUSTOMER'S NEGLIGENCE, SHALL IN NO EVENT EXCEED THE APPLICABLE CREDITS SPECIFIED IN A SERVICE PUBLICATION OR PRICING SCHEDULE, OR IF NO CREDITS ARE SPECIFIED, AN AMOUNT EQUIVALENT TO THE PROPORTIONATE CHARGE TO CUSTOMER FOR THE PERIOD OF SERVICE DURING WHICH SUCH MISTAKE, OMISSION, INTERRUPTION, DELAY, ERROR OR DEFECT IN THE SERVICES OCCURS AND CONTINUES. IN NO EVENT SHALL ANY OTHER LIABILITY ATTACH TO AT&T, EXCEPT AS SET FORTH IN SECTIONS 7.A.2 AND 7.A.3.

2) SECTION 1) WILL NOT APPLY TO:

a) BODILY INJURY, DEATH, OR DAMAGE TO REAL OR TANGIBLE PROPERTY DIRECTLY CAUSED BY AT&T'S NEGLIGENCE UNDER SECTION 7.A.2;

b) BREACH OF SECTION 7.H (Confidentiality), OR SECTION 4.C and 4.D (DIR Logo and Vendor Logo);

c) SETTLEMENT, DEFENSE OR PAYMENT OBLIGATIONS UNDER SECTION 7.A.3) (Infringements); OR

d) DAMAGES ARISING FROM AT&T'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

3) NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE, OR SPECIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, ADVANTAGE, SAVINGS OR REVENUES, OR INCREASED COST OF OPERATIONS.

J. Section 7. Vendor Responsibilities, Section O. Disclaimer of Warranties is hereby added as follows:

AT&T MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, OR ANY WARRANTY ARISING BY USAGE OF TRADE OR COURSE OF DEALING.

K. Section 7. Vendor Responsibilities, Section P. Disclaimer of Liabilities is hereby added as follows:

AT&T WILL NOT BE LIABLE FOR ANY DAMAGES, EXCEPT TO THE EXTENT CAUSED BY AT&T'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, ARISING OUT OF OR RELATING TO: INTEROPERABILITY, ACCESS OR INTERCONNECTION OF THE SERVICES WITH APPLICATIONS, EQUIPMENT, SERVICES, CONTENT, OR NETWORKS PROVIDED BY CUSTOMER OR THIRD PARTIES; SERVICE DEFECTS, SERVICE LEVELS, DELAYS, OR INTERRUPTIONS (EXCEPT FOR LIABILITY FOR SUCH EXPLICITLY SET FORTH IN THIS AGREEMENT OR A SERVICE AGREEMENT); FAILURE TO CORRECTLY ROUTE OR COMPLETE CALLS OR OTHER TRANSMISSIONS (INCLUDING 911 CALLS); LOST OR ALTERED MESSAGES OR TRANSMISSIONS; OR UNAUTHORIZED ACCESS TO OR THEFT, ALTERATION, LOSS, OR DESTRUCTION OF CUSTOMER'S, ITS AFFILIATE'S, USERS', OR THIRD PARTIES' APPLICATIONS, CONTENT, DATA, PROGRAMS, CONFIDENTIAL INFORMATION, NETWORK, OR SYSTEMS.

L. Section 7. Vendor Responsibilities, Section Q. Application and Survival is hereby added as follows:

The disclaimer of warranties and limitations of liability set forth in this Contract will apply regardless of the form of action, whether in contract, equity, tort, strict liability or otherwise and whether damages were foreseeable, and will apply so as to limit the

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liability of each party and its Affiliates, and their respective employees, directors, subcontractors, and suppliers. The limitations of liability and disclaimers set out in this Section 7 will survive failure of any exclusive remedies provided in this Contract.

M. Section 8. Contract Enforcement, B. Termination, 1) Termination for Non-Appropriation is hereby replaced in its entirety as follows:

If, after the first fiscal year in which a particular Service acquired hereunder is installed, funds are not appropriated to continue paying for that particular Service in a subsequent fiscal year or universal service discounts are not received to enable Customer to pay for that particular Service in a subsequent fiscal year, then Customer may terminate that particular Service as of the last day for which funds were appropriated or universal service discounts were received ("Date of Termination"), without being subject to termination charges set forth in the applicable Service Agreement; provided, however; that (i) Customer shall be obligated to pay all charges incurred through the Date of Termination, and (ii) Customer shall exercise such right to terminate by delivery to AT&T of a 30 day written notice setting forth the reason for termination.

N. Section 8. Contract Enforcement, B. Termination, 3) Termination for Convenience is hereby replaced in its entirety as follows:

DIR or Vendor may terminate the Contract, in whole or in part, by giving the other party thirty (30) calendar days written notice. A Customer may terminate a Purchase Order within thirty (30) days of issuance of the Purchase Order if it is reasonably determined by the Customer that Vendor will not be able to deliver services in a timely manner to meet the business needs of the Customer.

O. Section 8. Contract Enforcement, B. Termination, 4) Termination for Cause, b) Purchase Order is hereby renamed **Purchase Order or Service Agreement** and replaced in its entirety as follows:

b) Purchase Order or Service Agreement

Customer or Vendor may terminate a Purchase Order or Service Agreement upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order or Service Agreement in accordance with Section 3.B.2 above. The non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Purchase Order or Service Agreement.

P. Section 8. Contract Enforcement, B. Termination, 7) Suspension and Termination of Services is hereby added as follows:

The following additional suspension and termination of Services provisions apply:

a) **Fraud or Abuse.** AT&T may terminate or suspend an affected Service immediately by providing Customer with as much advance notice as is reasonably practicable under the circumstances if Customer (i) commits a fraud upon AT&T, (ii) utilizes the Service to commit a fraud upon another party, (iii) unlawfully uses the Service, (iv) abuses or misuses AT&T's network or Service, or (v) interferes with another customer's use of AT&T's network or services.

b) **Withdrawal of Services.** Notwithstanding that a Pricing Schedule or Service Agreement may commit AT&T to provide a Service to Customer for a Term, and unless applicable law or regulation mandates otherwise, AT&T may discontinue providing a Service upon 12 months' notice, or a Service Component upon 120 days' notice, but only where AT&T generally discontinues providing the Service or Service Component to similarly-situated customers.

c) **Definition of Fraudulent Use.** The fraudulent use of, or the intended or attempted fraudulent use of, CUSTOM NETWORK SERVICE is prohibited. The following activities constitute fraudulent use: (i). Using CUSTOM NETWORK SERVICE to transmit a message, locate a person, or otherwise give or obtain information, without payment for the service, (ii) Using or attempting to use CUSTOM NETWORK SERVICE with the intent to avoid the payment, either in whole or in part, of the charges for the service by: (1) Rearranging, tampering with, or making connections not authorized by this Agreement to any service components used to furnish CUSTOM NETWORK SERVICE, or (2) Using fraudulent means or devices, tricks, schemes, false or invalid numbers, false credit devices, or electronic devices.

Q. Section 8. Contract Enforcement, B. Termination, 8) Effect of Termination is hereby added as follows:

a) Termination by either party of a Service Component or Service does not waive any other rights or remedies a party may have under the Service Agreement. Termination or suspension of a Service Component or Service will not affect the rights and obligations of the parties regarding any other Service.

b) If a Service or Service Component is terminated, Customer will pay all amounts incurred prior to the effective date of termination. If Customer terminates a Service or Service Component prior to the date Customer's obligation to pay for Services begins, Customer will reimburse AT&T for time and materials incurred prior to the effective date of termination, plus any third party charges resulting from the termination.

R. Section 8. Contract Enforcement, B. Termination, 9) Termination Charges is hereby added as follows:

If, on or after Customer's obligation to pay for Services begins, Customer terminates a Purchase Order or Service Agreement for convenience or Vendor terminates a Purchase Order or Service Agreement for Customer's fraud or abuse, Customer's hazardous materials violations, or Customer's material breach, Customer will pay termination charges as follows:

If termination occurs before the end of the term of the Service Agreement, 50% (unless a higher percentage is specified in the Service Agreement) of the monthly recurring charges for the terminated Service or Service Component multiplied by the months remaining in the term, plus any waived or unpaid non-recurring charges identified in the Service Agreement, plus any charges incurred by AT&T from a third party (*e.g.*, not an AT&T Affiliate) identified in the Service Agreement, due to the termination.

S. Section 8. Contract Enforcement, C. Force Majeure is hereby replaced in its entirety as follows:

Except in the case of payment of amounts due, DIR, Customer, or Vendor may be excused from performance under the Contract for any period when performance is prevented due to any cause beyond such non-performing party's reasonable control, including an act of God, strike, war, civil disturbance, epidemic, loss or damage due to fire, explosion, cable cuts, power blackout, earthquake, flood, embargo, labor disputes, acts of civil or military authority, acts of a public enemy, acts or omissions of carriers or suppliers, acts of regulatory or governmental agencies, or court order, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties when commercially reasonable. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order within thirty (30) days of the issuance of the Purchase Order if it is reasonably determined by the Customer that, as a result of a Force Majeure event, Vendor will not be able to deliver services in a timely manner to meet the business needs of the Customer.

T. Section 11. Import/Export Control is hereby added as follows:

The parties acknowledge that equipment, services, software, and technical information (including technical assistance and training) provided under this Contract may be subject to import and export laws, conventions or regulations, and any use or transfer of the equipment, products, software, and technical information must be in compliance with all such laws, conventions and regulations. The parties will not use, distribute, transfer, or transmit the equipment, services, software, or technical

information (even if incorporated into other products) except in compliance with such laws, conventions and regulations. Customer, not AT&T, is responsible for complying with such laws, conventions and regulations for all information, equipment and software Customer transmits between countries using the Services.

U. Section 12. No Third Party Beneficiaries is hereby added as follows:

This Agreement is for the benefit of permitted Customers and AT&T, and does not provide any third party (including Users) the right to enforce or bring an action for any remedy, claim, liability, reimbursement, cause of action or other right or privilege.

V. Section 13. Survival is hereby added as follows:

The respective obligations of Customer and AT&T that by their nature would continue beyond the termination or expiration of this Contract, including without limitation, the obligations set forth in Section 7.H (Confidentiality), Section 7.K (Limitation of Liability), Section 7.O. (Disclaimer of Warranties), 7.P. (Disclaimer of Liabilities), and Section 7.A.2 and 3) (Indemnification), will survive termination or expiration.

W. Managed Services Requirements

1. Vendor shall prepare and provide each customer with a managed service solution proposal. The proposal shall include all services proposed by Vendor which are included in this contract, as well as all Excluded Service Offerings and associated fees as required for a Customer to contract for a complete solution. Any Excluded Service Offerings must be procured by the customer through either the DIR TEX-AN or DIR Go DIRECT contracts. Vendor shall ensure any needed TEX-AN and/or Go DIRECT contracted services are purchased by Customers as a part of the solution project management. Vendor acknowledges that Assistance Organizations as defined in Appendix A, Section 2, are prohibited from ordering from the TEX-AN contracts.
2. The centralized telecommunications system for the state of Texas is known as TEX-AN. The current technological platform of TEX-AN is known as TEX-AN 2000. The TEX-AN 2000 architecture provides a solid statewide communications infrastructure that is adaptable to changing requirements and can incorporate new and emerging technologies. The TEX-AN 2000 platform provides unified, scalable, redundant, flexible, and extremely cost-effective networking solutions. TEX-AN 2000 provides voice and data services and features:

Voice Services:

- Toll-Free Service
- Long Distance Service
- Directory Assistance
- Dedicated circuit access

Data Services:

- Frame Relay/Asynchronous Transfer Mode (ATM)
- MPLS (Multiprotocol Label Switching)
- Access Services
- Internet Access
- Point-to-Point circuits
- DSL

Vendors must utilize the TEX-AN Network for transport. These services and associated fees should be included by the vendor in a managed service solution proposal as required for a Customer. The Customer is required, as the eligible purchasing entity, to utilize the current TEX-AN or Go DIRECT Contracts and procedures to directly purchase the services from DIR.

In addition to its primary services, DIR offers Go DIRECT contracts for communications services. These contracts are awarded on behalf of the state according to state competitive bidding requirements, and are designed to satisfy user requirements for easy-to-use communications services contracts. The comprehensive suite of products and services offered by these contracts includes:

- Interpreter Services
- Local Telephone Services
- Wireless/Cellular Services
- Pagers and Paging Services
- Payphone Long Distance Service
- Calling Cards

These services and associated fees should be included by the vendor in a managed service solution proposal as required for a customer. The customer is required, as the eligible purchasing entity, to utilizing the current TEX-AN or Go DIRECT Contracts and procedures to directly purchase the services from DIR.

3. Vendor shall make every effort to provide value to DIR Customers through well defined requirements and project scheduling that meet the stated objectives and business goals for managed service customers. Vendors must create Statements of Work (SOW) under this Contract to document customer expectations; requirements; milestones for deliverables and activities; and payment schedules.
4. Vendor shall provide a copy of Customers proposed SOW and solution design documents to a designated contact at DIR no less than thirty days prior to presenting the final managed services solution proposal to the customer. The plan for the TEX-AN network connectivity in the solution design must be approved by DIR. The approval shall occur as soon as practicable based on the date of submission.
5. Vendor will be assigned a specific DIR liaison to facilitate the communication and management of the contract provisions outlined in this document for reviews, reporting, purchasing and approvals.
6. Vendor shall employ performance-based managed services for highly reliable customer solutions that meet or exceed customer expectations and performance metrics. Performance metrics and SLA's will meet, as a baseline, or exceed industry standards.
7. Vendor shall provide an effective and efficient management information system that provides comprehensive, accurate, and timely information on managed service solutions, program status, performance, and billing. DIR future plans may require vendors to provision an integrated management system for the visibility of performance metrics with feeds to DIR from vendor help desk systems and real time reporting tools.
8. Vendor shall ensure the customer's transition to the next-generation Managed Services Solution is seamless and transparent to the Customer without disruption of existing services.
9. Vendor shall adhere to the DIR Security Policies included in 1 TAC Chapter 202, Information Security Standards and be consistent with the best practices as outlined in the State Enterprise Security Plan, *Securing Texas Information Resources*, and published May 31, 2007. Vendor must convey the established security standards to the customer, as well as any additional vendor provided security services. The State Enterprise Security Plan and other guiding security policies are located on the DIR web site.
10. Vendor will execute a direct contract with the customer that accurately reflects the resources required for the total project and contains the resources and prices for services the customer is required to purchase directly from DIR for the successful implementation of the proposed solution ("Service Agreements"). DIR will bill

the customer directly for the services purchased from TEX-AN. Vendor is responsible for preparing and properly billing the customer for its services according to milestones or other scheduled triggering events. DIR reserves the right to require the vendor to work with DIR on the future requirement to provide DIR with an electronic submission or access to customer billing records.

11. In addition to all other reporting requirements listed in Appendix A, for the Managed Services Service Agreements entered into with customers under this Contract, Vendor shall submit to the designated DIR contacts the following additional contract reports, in a format to be determined by DIR:

A. Monthly Reports – High Probability Prospects

- A report will be provided by the tenth calendar day of each month detailing Vendor's prior month's interaction with prospective Customers that have been qualified by the Vendor to be a viable prospect for services delivered under this Contract. A viable prospect is one having the intent and financial capability to purchase the solution and has at least a 75% probability of doing so within 120 days. These reports will include, but not be limited to the Customer name, Customer contact name and contact information, the initial date of engagement with the Customer, the scope of the solution including Customer requirements, the current status of the project, the next steps anticipated in the project, and the anticipated close date and confidence level.

B. SLAs / Performance Metrics

- SLA and Performance Metrics reporting requirements will be determined by DIR within 60 days of execution of a managed services contract between the Vendor and the individual Customer. It is anticipated that these metrics will include, but not be limited to service performance (on-time, uptime/accessibility), quality performance (accuracy), customer satisfaction, and process-level efficiency (e.g. staffing, scheduling, forecasting).

C. Sales Activity Reports

- A report will be provided by the tenth calendar day of each month detailing any contracts which Vendor has executed in the prior month with Customers to provide services under this contract. This report will include, but not be limited to the date of contract execution, amount of revenue commitment under the contract, and anticipated start date of project. Also to be included in these reports are copies of all Customer executed documents.

D. Status of Signed Projects Reports

- A report will be provided by the tenth calendar day of each month detailing the Vendor's prior month's activity related to ongoing projects.

These reports will include, but not be limited to the Customer's name, project name, project scope, Customer executive sponsor, Vendor project manager with contact information, current project phase, current project status (e.g. red, green, yellow), original key milestone projected completion dates, actual key milestone completions dates, changes in staffing, critical issues and risks. Key milestones should include, but are not limited to requirements assessment, design, development, system test, user acceptance test and deployment.

Vendor shall submit the reports in a format to be determined by DIR. The reporting formats will be provided to the vendor within sixty days after contract signing.

12. TEX-AN Next Generation

DIR will be rebidding TEX-AN in May of 2008. Any Contracts awarded from that procurement will be to replace the existing TEX-AN Contract. Part of the TEX-AN Contract(s) will allow for the awarded TEX-AN Vendor(s) to buy out any Service Agreements entered into under this Contract should Vendor not be an awarded vendor under the new TEX-AN contracts for services provided under this contract. Specific transitional language will be promulgated by DIR and must be used by Vendor in all Service Agreements with a term beyond August 31, 2009.

13. AT&T Deliverables

A. Services.

AT&T agrees to either provide or arrange to have an AT&T Affiliate provide Services to Customer in accordance with this Contract, subject to availability and operational limitations of systems, facilities and equipment. Where required, an AT&T Affiliate authorized by the appropriate regulatory authority will be the service provider.

B. AT&T Equipment.

Services may include use of certain equipment owned by AT&T that is located at the Site ("AT&T Equipment"), but title to the AT&T Equipment will remain with AT&T. Customer must provide electric power for the AT&T Equipment and keep the AT&T Equipment physically secure and free from liens and encumbrances. Customer will bear the risk of loss or damage to AT&T Equipment (other than ordinary wear and tear) except to the extent caused by AT&T or its agents.

C. Software.

Any software used with the Services will be governed by the written terms and conditions applicable to such software. Title to software remains with AT&T or its supplier. Customer must comply with all such terms and conditions and they take precedence over this Contract as to such software.

14. Customer's Cooperation

A. Access Right.

Customer will in a timely manner allow AT&T to access property and equipment that Customer controls as reasonably required to provide the Services, and Customer will obtain, at Customer's expense, timely access for AT&T to property that Customer does not control (other than public property) as reasonably required to provide the Services. Access rights include the right to construct, install, repair, maintain, replace and remove access lines and network facilities, as well as to use ancillary equipment space within a building, as necessary for Customer's connection to AT&T's network. Customer must provide AT&T timely information and access to Customer's facilities and equipment as AT&T reasonably requires to provide the Services, subject to Customer's reasonable security policies. Customer will obtain any necessary licenses, permits and consents (including easements and rights-of-way). Customer will have the Site ready for AT&T to perform its work according to a mutually agreed schedule.

B. Safe Working Environment.

Customer will ensure that the location at which AT&T installs, maintains or provides Services is a suitable and safe working environment, free of Hazardous Materials. "Hazardous Materials" means any substance or material capable of posing an unreasonable risk to health, safety or property or whose use, transport, storage, handling, disposal, or release is regulated by any law related to pollution, protection of air, water, or soil, or health and safety. AT&T does not handle, remove or dispose of Hazardous Materials, and AT&T has no obligation to perform work at a location that is not a suitable and safe working environment. AT&T will not be liable for any Hazardous Materials. If AT&T encounters any Hazardous Materials at the Site where AT&T is to install, maintain or provide Services, AT&T may terminate the affected Service or Service Component, or suspend performance until Customer removes and remediates Hazardous Materials at Customer's expense in accordance with applicable law.

C. Users.

"User" means anyone who uses or accesses any Service provided to Customer. Customer will cause Users to comply with this Agreement, and Customer agrees that Customer is responsible for Users' use of any Services, unless expressly provided to the contrary in applicable Service Publications.

D. Resale of Services.

Customer may not resell the Services to third parties without AT&T's written consent. Where permitted under applicable law, Customer may resell the Services to Customer's Affiliates without AT&T's consent.

Vendor Contract No. _____

This Contract is executed to be effective as of the date of last signature.

AT&T Corporation

**The State of Texas, acting by and through the
Department of Information Resources**

Authorized By: Signature on File

Authorized By: Signature on File

Name: J.N. Shelgren

Name: Cindy Reed

Title: Regional Vice President-AT&T Texas

Title: Deputy Executive Director
Operations & Statewide Technology Sourcing

Date: 04/17/08

Date: 04/24/08

Legal: Signature on File 04/21/08